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YAVAPAI COUNTY, ARIZONA

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Shaunna Kelbaugh

BY: _____

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S
MOTION TO DECLARE DEATH
QUALIFICATION OF THE JURY
UNCONSTITUTIONAL AND FOR ITS
FAILURE, IN PRACTICE, TO MEET
THE MINIMUM CONSTITUTIONAL
REQUIREMENT SET FORTH IN
FURMAN, GREGG AND THEIR
PROGENY

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Declare Death Qualification of the Jury Unconstitutional for Its Failure, In Practice, to Meet the Minimum Constitutional Requirements Set Forth in *Furman, Gregg* and Their Progeny. Defendant's Motion should be denied as he has failed to show that death-qualifying a unitary jury is either a violation of his constitutional rights or of fundamental fairness. Additionally, judicial economy favors impaneling one death-qualified jury for a capital case. The State's position is supported by the attached Memorandum of Points and Authorities.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **FACTS:**

3 Defendant is charged with Burglary in the First Degree and the First Degree Murder of
4 his ex-wife, Carol Kennedy. Following a *Chronis* Hearing on the death penalty aggravators,
5 this Court determined probable cause existed to believe Defendant murdered Carol on the same
6 occasion as he committed another serious offense, A.R.S. § 13-703(F)(2), that Defendant
7 murdered Carol for pecuniary gain, A.R.S. § 13-703(F)(5), and that Defendant murdered Carol
8 in a especially cruel and depraved manner, A.R.S. § 13-703(F)(6). Defendant now requests
9 that this Court either strike the death notice as unconstitutional or adopt a two-jury procedure
10 whereby a death qualified jury would be impaneled only if Defendant is convicted at the
11 guilt/innocence phase of trial.
12

13 **LAW AND ARGUMENT:**

14 **I. *The Constitution does not require separate juries for the guilt and penalty phase of***
15 ***a death penalty trial.***

16 In *Lockhart v. McCree*, 476 U.S. 162, 175-76, 106 S.Ct. 1758, 1766 (1986), the
17 United States Supreme Court held that “[d]eath qualification,’ ... is carefully designed to
18 serve the State’s concededly legitimate interest in obtaining a *single jury* that can properly
19 and impartially apply the law to the facts of the case at both the guilt and sentencing phases
20 of a capital trial.” (emphasis added). No case law holds that a defendant has a constitutional
21 right to impanel two separate juries in a death penalty case.
22

23 **II. *Death qualifying a unitary jury does not violate Defendant’s constitutional rights***
24 ***or fundamental fairness.***

25 Defendant offers a plethora of data collected by the Capital Jury Project as evidence
26 that the process of death qualifying a jury and death qualified juries violate constitutional

1 principles. Defendant contends that the data show that death qualifying jurors produces a
2 group of jurors that are significantly more conviction-prone than jurors who are not so
3 qualified and that the process of capital jury selection produces the most "unqualified" group
4 of jurors possible.

5 The Arizona Supreme Court does not agree. In *State v. Hoskins*, 199 Ariz. 127, 141,
6 14 P.3d 997, 1011 (2000), the defendant claimed "the states requested instructions regarding
7 the willingness to prospective jurors to convict, in light of the death penalty, simply created a
8 pool of jurors more likely to convict." The Arizona Supreme Court cited the numerous cases
9 where it expressly rejected the same argument. See *State v. Lee*, 189 Ariz. 608, 617, 944
10 P.2d 1222, 1231 (1997); see also *State v. Gulbrandson*, 184 Ariz. 46, 57, 906 P.2d 579, 590
11 (1995) (death qualifying a jury does not violate the right to an impartial jury drawn from a
12 fair cross-section of the community); *State v. West*, 176 Ariz. 432, 440, 862 P.2d 192, 200
13 (1993) (excusing jurors who disapprove of capital punishment does not violate Arizona
14 constitutional ban against excusing jurors for their religious convictions), *overruled on other*
15 *grounds*, *State v. Rodriguez*, 192 Ariz. 58, 64, 961 P.2d 1006, 1012 (1998); *State v. Schaaf*,
16 169 Ariz. 323, 331, 819 P.2d 909, 917 (1991) (jurors may be death qualified even though
17 they do not impose the death penalty).

18 The United States Supreme Court also addressed this issue in *Lockhart v. McCree*,
19 476 U.S. 162, 173, 106 S.Ct. 1758, 1764 (1986). As with the instant case, the defendant in
20 *McCree* offered numerous social science studies to show that death qualification produced
21 conviction-prone juries and claimed this was a violation of both the fair-cross-section and
22 impartiality requirements of the Sixth and Fourteenth Amendments. In its ruling rejecting
23 the defendant's claim, the Court wrote:
24
25
26

[W]e will assume for purposes of this opinion that the studies are both methodologically valid and adequate to establish that “death qualification” in fact produces juries somewhat more “conviction-prone” than “non-death-qualified” juries. We hold, nonetheless, that the Constitution does not prohibit the States from “death-qualifying” juries in capital cases.

Id.

Simply stated, no court has found a constitutional violation or impingement on a defendant’s rights when a unitary death-qualified jury is impaneled for a capital trial.

III. Judicial economy demands the use of a unitary jury in a death penalty trial.

On multiple occasions the defense team has brought to the Court’s attention the media attention this case has received. Much of Defendant’s proposed juror questionnaire is directed toward learning what a prospective juror has read or heard regarding this case. To address this issue, the defense team has proposed a jury selection schedule which would entail sending 400-500 jury summons to potential panelists with the ultimate goal of selecting a panel of 16 jurors. The defense team anticipates the process will exhaust the first 3 weeks of the trial schedule. The defense team has implied that because of the media exposure, finding an untainted jury in this county will be difficult if not impossible. The two-jury scenario would only increase the risk of a tainted jury pool. If this Court were to grant Defendant’s proposed two-jury scenario, it is highly likely that the pool from which the penalty phase jury eventually would be pulled would have had even greater opportunity to learn of the case through trial publicity.

More to the point, the presumption in Arizona is that the trier of fact who determines guilt and aggravating or mitigating circumstances will be the same. A.R.S. § 13-703(D)¹

¹ Renumbered as A.R.S. § 13-751(D) effective January 1, 2009.

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1 provides that "[e]vidence that is admitted at the trial that relates to any aggravating or
2 mitigating circumstance shall be deemed admitted as evidence at the sentencing proceeding if
3 the trier of fact considering that evidence is the same trier of fact that determined the
4 defendant's guilt." The State has alleged Defendant murdered Carol on the same occasion as
5 he committed another serious offense, that Defendant murdered Carol for pecuniary gain, and
6 that Defendant murdered Carol in an especially cruel and depraved manner. The State will
7 refer to testimony from the witnesses at the guilt phase to prove these aggravators at the
8 penalty phase. Impaneling separate juries would require that the State present virtually the
9 entire case twice.
10

11 **CONCLUSION:**

12 Whereas Defendant has failed to show that death-qualifying a unitary jury is a
13 violation of his constitutional rights and it is not in the interest of judicial economy to
14 impanel two separate juries, Defendant's motion should be denied.
15

16
17 RESPECTFULLY SUBMITTED this 4th January, 2010.
18

19 Sheila Sullivan Polk
20 YAVAPAI COUNTY ATTORNEY

21
22 By: 

23 Joseph C. Butner
24 Deputy County Attorney

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COPIES of the foregoing delivered this
4th day of January, 2010 to:

Honorable Thomas J. Lindberg
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